



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff)	
)	
-vs-)	Case No.
)	S90-00056
CONSOLIDATED RAIL CORPORATION,)	
a/k/a CONRAIL,)	
)	
Defendant and)	
Third Party Plaintiff,)	
)	
PENN CENTRAL CORPORATION,)	
et al.,)	
)	
Third Party Defendants.)	
-----)	

The deposition of WESLEY L. CALLENDER

Date: Friday, December 11, 1992

Time: 9:40 o'clock a.m.

Place: Suite 312
205 West Jefferson Boulevard
South Bend, Indiana

Called as a witness by the Plaintiff
in accordance with the Federal Rules of Civil
Procedure, pursuant to notice duly served and
agreement between counsel for the parties.

Before Richard L. Holle, CSR, CP
Notary Public, State of Indiana

1 MR. KURT N. LINDLAND
2 U.S. Environmental and Natural
3 Resources Division
4 Environmental Region 5:CS-3T
5 77 West Jackson Boulevard
6 Chicago, IL 60604

7 For the Plaintiff;

8 MR. JAMES A. ERMILIO
9 Bingham, Dana & Gould
10 1550 M Street, N.W.
11 Washington, D.C. 20005

12 For Consolidated Rail Corporation;

13 MR. PIERCE E. CUNNINGHAM
14 Frost & Jacobs
15 2500 East Fifth Street
16 Cincinnati, OH 45202

17 -and-

18 MR. GLENN ROSSWURM
19 May, Oberfell & Lorber
20 300 North Michigan Street
21 South Bend, IN 46601

22 For Penn Central Corporation.
23
24
25

I N D E X

THE DEPOSITION OF

WESLEY L. CALLENDER

DIRECT EXAMINATION

By Mr. Lindland.....Page 4

CROSS EXAMINATION

By Mr. Ermilio.....Page 62

WESLEY L. CALLENDER,

called as a witness by the Plaintiff, being first
duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LINDLAND:

Q Would you please state your full name for the
record.

A Wesley L. Callender.

Q And your address, Mr. Calendar?

A (b) (6)

Q And your phone number, please?

A (b) (6)

Q As I mentioned earlier, my name is Kurt Lindland.
I represent the United States Environmental
Protection Agency in the action for which we are
here today. Are you familiar with the oath that
you just took?

A Yes.

Q Are you familiar with that oath as binding on you
today as it would be in a court of law?

A Yes.

Q If there's a question that I ask and you don't
understand, say you don't understand it and I can
rephrase it for you?

A Very well.

1 Q If there's an objection, you should still answer
2 the question unless you are instructed otherwise
3 by your attorney.

4 A I understand.

5 Q If you need to leave for any reason, say something
6 and we can arrange for a break.

7 A Very well.

8 Q Have you ever been deposed before?

9 A Yes.

10 Q What year was the first time?

11 A I'd have to say approximately 1985 or '86.

12 Q Do you remember the name of the action?

13 A Not off the top of my head.

14 Q Was it involving Conrail?

15 A Yes.

16 Q Do you remember the nature of the action?

17 A Yes. I believe it was a suit that was brought
18 against Consolidated Rail Corporation with regard
19 to a traffic accident at a grade crossing.

20 Q Do you remember whether hazardous materials were
21 involved in that accident?

22 A No.

23 Q "No," you don't remember or they weren't involved?

24 A They weren't involved.

25 Q Were you deposed at any other time?

1 A Yes.

2 Q When was that?

3 A Sometime in the late 1980's.

4 Q Do you remember the name of that action?

5 A Not off the top of my head.

6 Q Did that also involve Conrail?

7 A Yes.

8 Q And what was the nature of that action, if you
9 remember?

10 A It was a Federal Employers Liability Act lawsuit.

11 Q Would that be a labor dispute?

12 A It would be a lawsuit that was brought by the
13 Plaintiff. As you are aware, the Plaintiff was
14 a railroad employee who brought suit against
15 Consolidated Railway Corporation for failure to --
16 allegedly failure to provide him with a safe place
17 to work.

18 Q Do you remember the nature of his complaint? In
19 other words, what made it unsafe, according to his
20 complaint?

21 A No.

22 Q Do you remember whether hazardous materials were
23 involved in that complaint?

24 A They were not.

25 Q Do you remember the name of the person who alleged

1 the unsafe place to work?

2 A Not off the top of my head, no.

3 Q Do you remember any of the attorneys involved in
4 that action?

5 A I believe Collins, Collins & DiNardo out of
6 Buffalo, New York represented the Plaintiff.

7 Q Was this a claim made with respect to the Elkhart
8 Rail Yard?

9 A No.

10 Q Do you remember what rail yard it was regarding?

11 A I believe it was a rail yard in or around
12 Cleveland, Ohio.

13 Q Have you been deposed on any other occasions?

14 A Yes.

15 Q When was that?

16 A I can't remember each and every time I have been
17 deposed, but I would say counting today, it would
18 be approximately a half a dozen times. And they
19 have all been with regard to either personal
20 injuries with respect to railroad employees who
21 have brought suit against Consolidated Rail
22 Corporation, or they have been involved with
23 traveler on the highway cases where citizens
24 driving vehicles have come into contact with trains
25 at grade crossings. None of which were involved

1 any hazardous materials.

2 Q All right. What is your role in these lawsuits?

3 A I work for the Consolidated Rail Corporation claim
4 department.

5 Q Okay. But are you a witness then, or --

6 A An investigator.

7 Q Okay. So you are notified -- or you are noticed
8 for these depositions because you are an
9 investigator for Conrail?

10 A I would assume.

11 Q Okay. In other words, during these depositions,
12 you are asked factual questions regarding these
13 accidents, is that right?

14 A Yes.

15 Q Okay. Have any of these accidents involved liquids
16 of any kind?

17 A Could you be more specific?

18 Q Sure. You mentioned that you have been deposed on
19 several occasions, about six times, relating to
20 accidents?

21 A Yes.

22 Q Some were with cars and trains and others were with
23 just people at the rail yard.

24 Do you know whether any of those accidents
25 with cars first, whether those accidents involved

1 liquids spilling or leaking from any tank cars?

2 A No, I do not believe any of them had anything to do
3 with liquid spillage.

4 Q Okay. I'm talking about just any liquids not just
5 hazardous materials.

6 A Yes. I'm not saying that if a car was overturned,
7 an automobile, that perhaps you know, maybe it
8 might have had a hole or puncture of its gas tank
9 or something. I really don't know. It never
10 became an issue.

11 Q Okay. You wouldn't know that then if it happened,
12 is that right?

13 A I do not know that.

14 Q Okay. Have you ever testified at trial?

15 A No.

16 Q Did you speak with anyone in preparation for your
17 deposition today?

18 A Yes.

19 Q Who did you speak with?

20 A Jim Ermilio.

21 Q Did you speak with anyone else?

22 A No. All I did was advise my boss that I'm being
23 deposed today.

24 Q What did you say to your boss?

25 A I said "I am being deposed in a case that I believe

1 is entitled the Environmental Protection Agency
2 versus Consolidated Rail Corporation."

3 Q Do you remember what your boss said?

4 A He said "Okay."

5 Q All right. Have you talked to anybody else
6 regarding this deposition?

7 A I believe I told one of my -- one of the people
8 that work for me that I'm going to a deposition
9 today, when I left the office this morning.

10 Q Did you discuss any of the substance of this
11 deposition or what you expect it to be?

12 A No. Not -- not with the gentleman that is watching
13 the office. I just said I'm going to give my
14 deposition in a case.

15 Q Okay. Did you discuss the substance of this case
16 with anyone prior to coming here today, other than
17 your attorney?

18 A Oh, I mentioned to my boss that the little bit that
19 I know about this case, which is that it's my
20 understanding the Environmental Protection Agency
21 is suing Conrail with respect to some hazardous
22 material claim, and it's with respect to the cost
23 of cleanup. That's about all.

24 Q Okay. Have you seen any of the pleadings
25 associated with this case?

1 A No.

2 Q Did you prepare any notes or memorandums in
3 preparation for this deposition today?

4 A No.

5 Q Did you bring with you any documents today?

6 A No.

7 Q Do you know whether your counsel reviewed your
8 files in preparing for this deposition?

9 A Counsel did not review anything of mine that I am
10 aware of.

11 Q Okay. Do you have any documents other than those
12 in your files at Conrail that relate to your job at
13 Conrail?

14 A Could you say that again, please.

15 Q Sure. It's my understanding that you have files in
16 your office that relate to your job?

17 A That is correct.

18 Q Do you have any files in any other location other
19 than in your office that relate to your job at
20 Conrail?

21 A No.

22 Q I'd like to get some information on your background
23 now.

24 If you could state in summary form beginning
25 with high school, your complete educational

1 background.

2 A I graduated from high school in 1968, and I
3 graduated from college in 1976.

4 Q Okay. Which high school did you go to?

5 A I graduated from Oakwood High School in Dayton,
6 Ohio.

7 Q And did you attend college immediately after high
8 school?

9 A I did.

10 Q A what college did you attend?

11 A I first attended Kentucky Wesleyan College in
12 Owensboro, Kentucky in the fall of 1968. And I
13 went there for approximately two and a half years,
14 and then went for a short period of time to Miami
15 Jacobs Junior College in Dayton, Ohio and finally
16 ended up at Wright State University in Dayton, Ohio
17 where I matriculated and received a Bachelor of
18 Science degree in secondary education.

19 Q Okay. If we could go back first to when you went
20 to Kentucky Wesleyan College. What did you study
21 there for two and a half years?

22 A I believe I had a undeclared major.

23 Q Okay. Do you remember taking any courses relating
24 to the handling or use of hazardous materials?

25 A I did not.

1 Q What were the general nature of the courses you
2 took? Were they basic --

3 A Liberal arts.

4 Q You mentioned you went to Miami Jacobs Junior
5 College after that?

6 A That is correct.

7 Q And how long were you there?

8 A I can remember exactly. I would say maybe a half a
9 year and took maybe a couple of courses.

10 Q Were any of those courses related to the use or
11 management or handling of hazardous materials?

12 A No.

13 Q Do you remember the nature of those courses?

14 A I think I took an English lit course, and I don't
15 remember -- and I think I took maybe a geography or
16 geology course.

17 Q Okay. You then went to what college?

18 A Wright State University.

19 Q And what year was that?

20 A I can't remember exactly what year I started there,
21 but I do recall that I graduated in 1976, in I
22 believe it was December I received my degree.

23 Q And what did you study at Wright State University?

24 A As I've stated -- I believe I stated -- I said a
25 Bachelor of Science degree in secondary education

1 social studies.

2 Q I believe you did mention that. I missed it, I
3 think.

4 Did you take any courses related to the
5 handling, use or management of hazardous materials?

6 A No.

7 Q Did you work between 1968 and 1976 as well?

8 A Yes.

9 Q Okay. We will get to that in a moment.

10 Did you attend any other college or courses
11 after that? That is, after 1976.

12 A I did not go to any other colleges or universities
13 after graduating from Wright State University.

14 Q Did you attend any trainings or informal education
15 seminars?

16 A Sure. During the course of my career on Conrail,
17 yes.

18 Q Do you remember the first one you attended?

19 A I'd say probably back in the early 1980's, when I
20 joined the Claim Department and we would have two
21 or three-day seminars with respect to claims
22 handling at different locations throughout the
23 State of Ohio and Indiana.

24 Q When you say "claims handling," what do you mean?

25 A Oh, going over the jobs and duties of a claim agent

1 for the railroad.

2 We would have guest speakers talk about such
3 things as statement taking or whatnot.

4 Q Do you remember whether at that seminar, that first
5 one in 19 -- in the early eighties, whether the
6 handling or use of hazardous materials or accidents
7 involved hazardous materials was ever discussed?

8 A They were not.

9 Q Do you remember any other seminars you've attended
10 other than that one?

11 A I went to a seminar in Kansas City in I believe
12 1984, in the fall, for approximately a week, and it
13 was sponsored by the Association of American
14 Railroads, and it was a seminar for young claim
15 agents where we had a guest speaker that was a
16 doctor that talked about bone structures of the
17 body, and it was just a seminar covering different
18 aspects of a claim agent's job, that they should
19 know.

20 Q Now, when you say a claim agent's job, are you
21 speaking with respect to a personal injury claim
22 agent or a claim agent regarding freight material?

23 A Personal injury.

24 Q Generally, or --

25 A Generally.

1 Q (Continuing) -- strictly?

2 A A Conrail claim agent handles property damage
3 claims also, and personal injury claims.

4 Q Okay. So there's no distinction -- in other words,
5 there's no division of duties that divide a
6 personal injury claim agent from a claim agent
7 regarding freight?

8 A Not on Conrail.

9 Q Okay.

10 A As you were. Could you ask that question again?

11 Q Sure. You mentioned that a claim agent handles
12 both personal injury and freight claims or property
13 damage claims?

14 A Okay. That's where I wanted you to repeat that. I
15 would like to clarify that for you if I may.

16 Q Sure, go ahead.

17 A A claim agent would handle property damage claims
18 wherein an employee may have damaged his glasses
19 while he was working on the railroad, or if a
20 driver of an automobile is involved in a wreck at a
21 grade crossing and their automobile is damaged,
22 depending on the liability aspects.

23 Q Okay.

24 A We would handle those types of claims.

25 But we do have a freight claim damage

1 prevention department on the railroad, and I'm not
2 a part of that.

3 Q Okay. Then just so I'm clear as to what you are
4 saying, the claims that you handle and that a claim
5 agent as you have defined that as handling are
6 claims made by third parties other than customers
7 of Conrail?

8 A Yes and no. Let me give you an example. A
9 customer may have a bumping post on their property
10 and a bumping post is a post that's put up to
11 protect a wall inside their plant when rail cars
12 are being spotted.

13 Q Okay?

14 A Sometimes that bumping post may be damaged for
15 whatever reason.

16 Q Okay.

17 A Or let's say that one of their doors on their
18 factory may be damaged by a train that's coming in
19 and out of the building. Those property claims of
20 our shippers would be handled by the claim
21 department that I work for. However, it's my
22 understanding that if lading is damaged or lost,
23 that that would be handled by freight claims, and
24 that is what the shipper ships, whether it be cars
25 or whatever.

- 1 Those claims aren't brought to my department.
- 2 Q Okay. So for example if somebody lost, say 200,000
3 pounds of carbon tetrachloride out of a tank car
4 you would not know of this?
- 5 A I would not handle that claim. That claim would be
6 brought to the attention of somebody in freight
7 claims.
- 8 Q Okay. Have you attended any other seminars? The
9 last one you mentioned is in 1984 in Kansas City.
10 Missouri, I take it?
- 11 A Yes, it was not Kansas City, Kansas. Kansas City,
12 Missouri.
- 13 Q Okay.
- 14 A Since 1984 I may have attended a couple of more,
15 two or three-day seminars as a railroad claim agent
16 in either the states of Ohio or Indiana. I haven't
17 had one of those seminars in several years now.
- 18 We are not currently holding them.
- 19 Q Okay. When you say "several years," do you mean
20 five years, more than five?
- 21 A I would say the last one I went to may have perhaps
22 been in 1987 or '88.
- 23 Q And what is the substance of material discussed at
24 those seminars?
- 25 A I believe I've answered that.

1 Q In 1987?

2 A They are all --

3 Q They are all the same?

4 A Basically the same. They just run in together in
5 my mind. They are just seminars where we discuss
6 such things as, you know, statement taking, what
7 goes into one of our files, different aspects of
8 the job.

9 Q Okay. Do you remember whether the subject of
10 hazardous materials was ever discussed at any of
11 those trainings?

12 A I can't remember it ever being discussed at one of
13 those training sessions.

14 Q Okay. I guess what I'm getting at is whether they
15 instruct you on how to notify a state environmental
16 agency if a spill of hazardous materials is
17 involved in any accident that you would be
18 reporting.

19 A I can't recall ever having instructions of that
20 nature.

21 Q Okay. As part of those seminars, do they instruct
22 you on who to notify once the claim is made?

23 A Could you repeat that question?

24 Q Sure. You mentioned that at these seminars they
25 instruct you on note taking, how to record an

1 incident, that kind of information?

2 A Generally.

3 Q Okay. Do you remember whether they instruct you on
4 who to notify after a claim is made? For example,
5 if you should call the police or an ambulance or --

6 A Usually we are notified of accidents through
7 different -- different avenues, and once we are
8 notified, we go about and do our job.

9 It's pretty basic stuff.

10 Q Okay. It's my understanding that you are notified
11 well after the accident, is that right?

12 A Not necessarily. I could be notified of an
13 accident almost immediately. At other times I
14 could not be notified for perhaps a day or two.

15 It depends on the -- it depends on what type
16 of accident it is.

17 Q Okay. If you are notified immediately, do you
18 remember having heard a discussion at any of these
19 seminars related to who you should contact after an
20 accident is reported to you?

21 A I can't recall.

22 Q Okay. Have you attended any other seminars since
23 then?

24 A As they relate to what?

25 Q Generally, have you attended any seminars?

1 A Perhaps Conrail's continuous quality improvement
2 program may fall under the general description of a
3 seminar.

4 Q Okay. I'm familiar with that.

5 Are you aware of any other seminars?

6 A Not that I can recall.

7 Q Okay. Are you aware of any other -- any courses
8 that you've taken other than seminars while you
9 were with Conrail?

10 A No.

11 Q Okay. You mentioned that you were employed between
12 1968 and 1976 while you were in school, is that
13 right?

14 A That is correct.

15 Q Where was the first place you were employed after
16 high school?

17 A I was employed with the Penn Central Railroad.

18 Q And what year was that?

19 A 1968.

20 Q And where was that?

21 A Dayton, Ohio.

22 Q What was your position then?

23 A I was a fireman.

24 Q Can you describe your responsibilities as a
25 fireman?

1 A Basically a fireman was generally an apprentice to
2 an engineer and through on-the-job training and
3 several examinations, one would become promoted if
4 they passed the examinations, to the position of an
5 engineer.

6 Q And what does an engineer do?

7 A Engineer operates the locomotives that haul the
8 train.

9 Q As a fireman, were you responsible for putting out
10 fires?

11 A No.

12 Q Okay. Why is a fireman called a fireman then?

13 A That name goes back to the old steam engine days
14 that ended in the mid-1950's, where a fireman would
15 put coal into the locomotive unit as fuel and they
16 would fire the locomotive.

17 And when they switched to diesel, they
18 continued to call those positions firemen.

19 Q Okay. So I assume you don't shovel coal into a
20 locomotive that doesn't require coal.

21 A That is correct.

22 Q Okay. What do you do then specifically?

23 A As a fireman, you generally pass railroad signals
24 that are given on your side of the locomotive and
25 relay them to the engineer, and sometimes spell the

1 engineer in operating the locomotive unit, and
2 generally learning how to operate a locomotive
3 unit.

4 Q Sort of an assistant engineer?

5 A You could say that.

6 Q How long were you a fireman?

7 A I was promoted to an engineer in approximately
8 1973, but I continued to work as a fireman because
9 I didn't have the seniority to work as an engineer.

10 But the railroad could use me as a engineer
11 if they needed me as an engineer.

12 Q I see. So is it fair to say that your knowledge
13 outpaced your seniority?

14 A I don't know if I could say that.

15 Q Okay. Well, I mean I am just a little bit
16 confused. You said you didn't have the seniority
17 to be an engineer?

18 A Right. Once you are promoted you are on the same
19 seniority roster as a engineer when you are a
20 fireman.

21 Q Okay.

22 A And let's say that the engineers' extra board is
23 exhausted and they want to call an extra train, and
24 they needed a qualified engineer to run that train;
25 they could call a fireman if he has been promoted

1 to operate that train.

2 Q I see. Okay.

3 A And from time to time in the early seventies, I was
4 called out as a engineer, but 99 and 9 tenths
5 percent of the time -- that's a rough estimate -- I
6 worked as a fireman.

7 Q Okay. How long were you an engineer/fireman?

8 A Up until I'd say 1977, when I took a leave of
9 absence from the railroad.

10 Q Okay. If we could go back to 1973 when you were
11 promoted to engineer, was that also in Dayton?

12 A I received my promotion test down in Cincinnati,
13 Ohio and I worked on the old -- I believe it was
14 called the Cincinnati Division of the old Penn
15 Central Railroad.

16 And I could work on trains in, you know,
17 Columbus, Springfield, Ohio, Dayton, Cincinnati.

18 Q And did you work on those trains, all those trains
19 between 1973 and 1977?

20 A Did I work in all those trains? I worked in places
21 on those trains, yes.

22 Q Okay. Did you ever work in the Elkhart yard
23 between '73 and '77?

24 A No.

25 Q What did you do in 1977?

1 A I joined the United States Marine Corps.

2 Q Did you join as an officer, or were you a --

3 A I was a commissioned officer.

4 Q And where was that?

5 A Quantico, Virginia.

6 Q What was your first job in the Marines?

7 A I was a ground supply officer with the Second
8 Marine Aircraft Wing in New River, North Carolina.

9 Q Was that a general supply officer?

10 A Ground supply officer.

11 Q Okay. What is a ground supply officer?

12 A A ground supply officer is in charge of equipment
13 and supplies for Marine units.

14 Q Does that include maintenance equipment, that kind
15 of thing?

16 A No. Because in the Marine Corps, a supply had two
17 halves or two houses, Air Supply and Ground Supply,
18 and I was on the Ground Supply side, and I was in
19 charge of such things as canteen cups and tents, GP
20 tents, Alice packs and whatnot.

21 Q What about cleaning supplies?

22 A We may have had general purpose office floor wax
23 cleaning supplies that I may have been involved in.
24 I really don't remember.

25 Q All right. I understand.

1 How long were you in the Marines?

2 A I was a reserve officer on active duty from 1977
3 till I believe the summer of 1981, and then left
4 active duty, and I was with the reserve unit out of
5 Cleveland, Ohio from 1983 to I believe 1986 or '87.

6 Q Okay. Did you become employed in 1981, when you
7 left active duty?

8 A Yes. I came back to the railroad when I left
9 active duty.

10 Q And what railroad is that?

11 A Consolidated Rail Corporation.

12 Q Where were you stationed or where were you located
13 with Conrail in 1981?

14 A Columbus, Ohio.

15 Q What was your position in 1981 with Conrail?

16 A I came back to work as a fireman.

17 Q Had your responsibilities changed as a fireman
18 while you were gone? In other words, while you
19 were in the Marines had Conrail changed the
20 responsibilities under a fireman?

21 A I don't believe so..

22 Q How long were you a fireman then?

23 A I worked as a fireman up until the spring of 1982,
24 and I became a road foreman of engines in
25 Columbus, Ohio.

1 Q Would a road foreman be the same thing as a track
2 foreman?

3 A No. A road foreman is in charge of locomotive
4 engineers, basically.

5 Q When you say "in charge of," what do you mean by
6 "in charge of"?

7 A You make sure that the train engineers are
8 qualified over the routes that they run trains on
9 and that they are up to date in their rules,
10 examinations, etcetera.

11 Q So it's sort of a personnel management sort of a
12 position?

13 A I don't know if I could characterize it as that.
14 Pretty much as I've stated. If that sounds like a
15 personnel management position, then so be it.

16 Q Okay. Did you operate trains as a road foreman?

17 A Very seldom. I would ride with crews and see that
18 they are operating properly, and I may spell the
19 engineer for a few moments just to keep my hand on
20 the throttle so to speak, but basically no, I would
21 just ride with them.

22 Q Okay. And when you said that you would ride with
23 them and check to see that the engine was running
24 properly do you mean the engine itself or that the
25 people that are operating it?

1 A The people that are operating it are running it
2 properly.

3 Q How long were you a road foreman?

4 A I was a road foreman up until about the end of
5 1983.

6 Q Were you always in Columbus as a road foreman?

7 A Yes.

8 Q What did you do in 1983?

9 A I resigned that position as a road foreman and went
10 back to engine service and in the -- excuse me. To
11 late 1982 is when I resigned as a road foreman,
12 late 1982.

13 Q Okay.

14 A And then in early 1983, I joined the Claim
15 Department as a claim agent in Cleveland, Ohio.

16 Q Okay. But in late '82 you went to the engine
17 service?

18 A Yes. I resigned from being a road foreman and I
19 went back to engine service, and in early 1983, I
20 joined the Claim Department.

21 Q Okay. What did you do in engine service? Is that
22 like a fireman?

23 A Fireman-engineer type of thing.

24 Q All right. And where was the Claims Department you
25 went to in 1983?

1 A As I stated, in Cleveland Ohio.

2 Q Okay. Are you still in Cleveland, Ohio?

3 A No. I'm presently located in Osceola, Indiana.

4 Q Okay. In 1983, what did you do in the Claims
5 Department?

6 A I hired out in the Claim Department as a claim
7 agent.

8 Q And when you say "claim agent," do you mean the
9 claim agent as you have defined that earlier?

10 A Yes.

11 Q That is for personal injury and property damage,
12 not lading damage?

13 A That is correct.

14 Q Okay. How long were you a claim agent in
15 Cleveland?

16 A Up until the spring of 1990.

17 Q Okay. What happened in 1990?

18 A I was promoted to Assistant District Claim Agent in
19 Elkhart, Indiana.

20 Q What were your responsibilities as Assistant
21 District Claim Agent in Elkhart, Indiana?

22 A Much the same as they were as a claim agent, except
23 that I had two claim agents that reported to me.
24 And I of course monitored their work.

25 Q Okay. How long were you Assistant District Claim

1 Agent in Elkhart?

2 A Up until early spring -- late spring or early
3 summer of 1991, when I was promoted to District
4 Claim Agent in Place.

5 Q District Claim Agent en place?

6 A In place. In other words, I stayed there. I was
7 not transferred; I stayed in the Elkhart area but I
8 was just promoted to a District Claim Agent.

9 Q I see.

10 A And I moved my office sometime during that time
11 frame from Elkhart to Osceola, which is about a
12 five-mile move.

13 Q Okay. That was in 1991?

14 A I believe I moved my office in 1990, but I was
15 promoted to District Claim Agent in late spring or
16 early summer of 1991.

17 Q Okay. And is that the position you hold today?

18 A That is correct. I'm a District Claim Agent.

19 Q Okay. If we go back to 1968 when you were a
20 fireman with Penn Central, are you aware of any
21 spills or releases of hazardous materials?

22 A Since 1968?

23 Q Right -- no. During -- from 1968 to 1973, do you
24 remember any spills of hazardous materials while
25 you worked as a fireman?

1 A No.

2 Q Would a fireman keep that kind of record?

3 A No.

4 Q Who would make that -- a record like that?

5 A Probably somebody in supervision, perhaps freight
6 claims.

7 Q Okay. If a train is out on the road, as they say,
8 and there is a spill, would the firemen have
9 anything to do with transmitting that information
10 either to a supervisor or from a supervisor?

11 A No. Normally a conductor would probably pass that
12 information on.

13 Q So a fireman would not be aware of any spills?

14 A Oh, he may be, but as far as passing any
15 information on, that would probably come from a
16 conductor of a train.

17 Q How would a fireman become aware of it?

18 A Well, if it -- a hypothetical situation --

19 Q Right.

20 A Let's say there's a derailment somewhere and a car
21 goes off the tracks and somehow its tank may become
22 punctured, the train is going to go into emergency
23 and it's going to stop, and if the train crew goes
24 back, either the conductor or a brakeman, to look
25 into what the problem is, I would imagine they come

1 back to the locomotive unit and state what the
2 problem is, and the fireman by just being there
3 would hear what he was saying.

4 Q And to the best of your knowledge between 1968 and
5 1973, you never heard of such incidences?

6 A That is correct.

7 Q In 1973 you said you were promoted to an engineer?

8 A I believe it was 1973, yes.

9 Q And from '73 to '77 you were an engineer/fireman?

10 A Fireman.

11 Q Okay. Do you remember hearing of any incidents
12 between those dates regarding hazardous materials?

13 A No.

14 Q Or liquids?

15 A No.

16 Q Tank cars?

17 A I don't recall hearing anything about that as it
18 pertains to your question, no.

19 Q Do you remember hearing about any derailments?

20 A Oh, I probably did, but I don't remember.

21 Q Okay. How -- based on the way you just answered
22 that, it's my understanding that there are several
23 derailments that occur on a train?

24 A Oh, during the course of one's working for the
25 railroad over the years, there's going to be

1 derailments from time to time. They are not
2 terribly common, but it does happen.

3 Q Are you aware of any derailments between '73 and
4 '77 involving a tank car?

5 A No.

6 Q In 1981 you mentioned -- I'm sorry. Strike that.

7 You mentioned that in 1981 you returned to
8 Conrail as a fireman?

9 A Yes.

10 Q And that was in Columbus, Ohio?

11 A Yes.

12 Q Do you remember hearing or being aware of any
13 accidents involving tank cars?

14 A From 1981 to when?

15 Q To 1983.

16 A No.

17 Q Even as a road foreman, you don't remember anything
18 like that?

19 A That is correct.

20 Q How would a road foreman hear about or become aware
21 of an accident involving a tank car?

22 A Let me give you a hypothetical situation: A train
23 is involved in an accident; a derailment has
24 occurred. The train engineer would call the train
25 dispatcher and advise him immediately of a

1 situation. The train dispatcher could very well at
2 that point get ahold of a road foreman and the road
3 foreman would go to the scene of the accident and
4 investigate it.

5 Q Did you ever investigate an accident as a road
6 foreman between 1982 and 1983?

7 A Yes.

8 Q Do you remember the nature of that accident?

9 A Yes. I believe a vehicle ran into the side of a
10 train that was going over a grade crossing.

11 Q Do you remember whether that accident involved a
12 tank car?

13 A No.

14 Q "No," it didn't or "No," you don't remember?

15 A No. I don't remember.

16 Q Okay. So as a road foreman, you have never heard
17 or been involved in responding to an accident with
18 a train other than the one you just indicated?

19 A I can remember another time while I was riding on a
20 train that came into contact with a wide trailer
21 home (indicating) that was trying to traverse a
22 grade crossing, and I believe I was riding a coal
23 train, and the driver of the truck that was hauling
24 the motor home got hung up on the crossing because
25 it was too wide to negotiate the curve, and the

1 train was hauling most probably over 10,000 tons of
2 coal and it was coming around a curve, and it went
3 through the motor home.

4 Luckily the cab was clear and nobody was
5 injured.

6 And other than those two, I can't recall any
7 others.

8 Q Okay. Are you aware of kind of the -- I guess the
9 dynamics of a train accident? In other words --
10 I'm sorry.

11 Do you know how far a train will travel after
12 it's in an accident?

13 A No. That depends a lot on the grade of the track
14 and the tonnage, perhaps even the temperature
15 outside.

16 Q The speed?

17 A And the speed, etcetera.

18 Q Okay. I'm sorry.

19 In late 1982, you went back to the engine
20 service department you mentioned. Do you remember
21 becoming aware of any accident in the end of 1982
22 when you became a fireman/engineer?

23 A Well, I went back to that service at that time.

24 Q Okay.

25 A I am not aware of any -- what was the question

1 again?

2 Q Are you aware of any accidents --

3 A No.

4 Q (Continuing) -- involving trains at that time.

5 A No.

6 Q So up to 1983 when you started in the claims
7 division in Cleveland, the only accidents you are
8 aware of are the two you've identified today?

9 A Those are the only two that I went out and
10 investigated. I believe you asked me if I went out
11 and investigated. I said I investigated those two
12 that I've just mentioned.

13 Whether or not I was aware of any other
14 accidents that happened somewhere else that I
15 overheard somebody else talking about, I don't
16 remember.

17 Q Okay. Do you remember hearing about any other
18 accidents involving tank cars?

19 A No.

20 Q Okay. You've identified earlier generally what
21 a claim agent does. If you could explain to me
22 exactly what you do as a claim agent from the
23 beginning of an accident. In other words, as soon
24 as you are notified of an accident, if you could
25 just carry that through and describe what you do.

1 A Well, we handle different types of accidents.
2 Basically we handle employee accidents, and with
3 regard to an employee accident once I hear that an
4 employee has been injured, depending upon the
5 severity of the accident or injury, I generally see
6 to it that a claim agent goes out and calls on the
7 injured party, and maybe go out and look at the
8 area where the accident occurred and perhaps touch
9 base with witnesses and investigate the case.

10 Q Okay. That's as a claim agent, correct?

11 A Yes.

12 Q Who did you report to?

13 A I report -- I report to Dearborn Division
14 headquarters.

15 Q Okay. All right. I think we are -- it may be
16 because my questioning is not too accurate.

17 What -- who do you report to as a claim
18 agent? In other words, in 1983 when you first
19 became a claim agent, what was the position that
20 you reported to?

21 A I reported to a District Claim Agent.

22 Q This was in Ohio, correct?

23 A That is correct.

24 Q Was there a claim agent assigned to the Elkhart
25 yard at that time, do you know?

1 A I'm sure there was.

2 Q Okay. So you would report to the District Claim
3 Agent the information you've identified, right?

4 A Yes. I would report to him. I would investigate
5 the case, evaluate the case, and depending upon its
6 merits, settle a case.

7 Q Would you make any conclusions and transmit those
8 conclusions to the District Claim Agent?

9 A Conclusions as to what?

10 Q As to a cause of the accident -- well, for example,
11 the cause of the accident.

12 A Yes.

13 Q So you would -- you would get the facts, make a
14 conclusion, talk to the District Claim Agent, and
15 you would then settle the case? Is that --

16 A If it merited settlement, and after gathering all
17 the information that I would need in order to make
18 that determination, yes.

19 Q Was there anybody else involved in settling the
20 claim other than yourself?

21 A Well, certainly. As a claim agent, you answer to
22 the District Claim Agent.

23 Q Okay. Who makes the ultimate decision then to
24 settle a claim. Is it the District Claim Agent?

25 A It depends on the case.

1 Q Are you talking about the severity of it?

2 A Yes.

3 Q Is that what it would depend on?

4 A Yes.

5 Q Perhaps the amount of money involved?

6 A Yes.

7 Q Okay. Would records be kept?

8 A Could you be more specific?

9 Q Sure. You mentioned that you would make
10 investigations and take notes and report the facts
11 revolving around an accident. Would you keep
12 records of those notes?

13 A They would become part of the file.

14 Q Do you know how long a file was kept?

15 A No.

16 Q And by "kept" I mean retained.

17 A No. I don't know how long a file was kept.

18 Q You were a claim agent between 1983 and 1990,
19 right?

20 A Yes.

21 Q Do you know whether in 1990, when you left to
22 become assistant District Claim Agent, whether
23 your files regarding the claims that you worked on
24 between '83 and '90, whether those files were kept?

25 A I don't know.

1 Q Okay. What would you do with a file after you were
2 done with your claim? In other words, after it was
3 settled, what would you do with your file?

4 A I would turn it in to the District Claim Agent for
5 filing.

6 Q Okay. And as a claim agent in '83, you would turn
7 it in to the District Claim Agent in -- is he in
8 Cleveland?

9 A He was in Cleveland, yes.

10 Q And would that District Claim Agent also cover the
11 Elkhart yard?

12 A No.

13 Q What District Claim Agent would cover the Elkhart
14 yard?

15 A When?

16 Q In 1983.

17 A John Conser.

18 Q In what city was he located?

19 A Fort Wayne.

20 Q Is that office still there today?

21 A No.

22 Q Where is the district claim office?

23 MR. ERMILIO: Today?

24 MR. LINDLAND: Right.

25 A Osceola, Indiana.

1 BY MR. LINDLAND:

2 Q And that's the office you are in?

3 A That is correct.

4 Q You mentioned in 1990 you had two claim agents
5 under you?

6 A That is correct.

7 Q When you were promoted to Assistant District Claim
8 Agent, right?

9 A Yes.

10 Q What would you do as assistant District Claim Agent
11 with respect to those two claim agents?

12 A I would assign them cases and they would go out and
13 investigate those cases. And that's about it.

14 Q Okay. Are you aware of any claims made between
15 1983 and 1990 involving tank cars?

16 A Where at?

17 Q I'm talking about any claims that you worked on,
18 anywhere.

19 A That I worked on?

20 Q Right.

21 A Between 1983 and 1990?

22 Q Right.

23 A No. I didn't -- no.

24 Q Okay. How about that you didn't work on but that
25 you became aware of?

1 A Yes.

2 Q And what claims are those?

3 A Back in I believe it was in 1985 there was a car
4 that was brought into Elkhart Yard that was leaking
5 I believe it was hydrogen fluoride.

6 Q How did you become aware of that incident?

7 A Because Conrail had a lawsuit pending against
8 the -- I believe it was the Burlington Northern,
9 and the company that made the car as well as the
10 company that loaded the car.

11 Q Who made the car, do you remember?

12 A I don't remember.

13 Q Do you remember who loaded it?

14 A I don't remember that.

15 Q Do you remember the nature of the action against
16 Burlington Northern?

17 A Yes. I believe we were going after these three
18 codefendants for reimbursement of our payments made
19 with regard to this incident.

20 Q Why was Burlington Northern involved?

21 A They had originally handled the car before we got
22 ahold of it.

23 Q So the car came from Burlington Northern?

24 A I believe so.

25 Q And -- okay. How would you know the car came from

1 Burlington Northern?

2 A I just believe that it did, because they were a
3 codefendant in this particular case.

4 Q Okay.

5 A They handled the car before -- I believe they
6 delivered the car to Conrail somewhere. I don't
7 know where, and the car ultimately ended up at
8 Elkhart.

9 Q Okay. How did you become aware of this? Did
10 somebody call you on the phone, did you work on
11 the claim?

12 A No. There was the lawsuit involving Conrail going
13 after reimbursement or indemnification, whatever,
14 of their payouts that are were involved in this
15 particular case. That case was still active up
16 until about maybe within the last year. It was
17 involved in litigation.

18 Q Okay. But I'm still unclear as to how you fit into
19 it.

20 A Oh, well, the case was still active, and so I was
21 just aware of it. I was not doing anything with it.
22 I was waiting for -- to hear when or how the court
23 would make decisions with respect to summary
24 judgments that had been filed.

25 Q Why were you concerned with whether a court would

1 make a decision regarding summary judgments?

2 A Oh, I was just interested in knowing if Conrail was
3 going to be reimbursed some money.

4 Q Was it sort of a personal interest or was that
5 interest related to your job?

6 A Well, as a claim agent one is involved in
7 collection cases also. We can act as collection
8 agents, and if we would have received money from
9 the Burlington or the -- or whoever was in that
10 case, it would have been money coming into Conrail.
11 It would have been of interest to me.

12 Though in this particular case I'm not sure
13 that would fall under the category of a collection.
14 It would be more of an reimbursement type of thing.

15 Q And would you be responsible then for that
16 reimbursement?

17 A No.

18 Q In other words -- okay.

19 Do you remember what the cause of that
20 accident was?

21 A No, because the case happened, and before I -- it
22 happened back in 1935, approximately five years
23 before I got to Elkhart.

24 I just know that there was a car that was
25 leaking I believe hydrogen fluoride, and there was

1 a evacuation of a certain portion of Elkhart. I
2 don't think it was very big. I'm not really sure.

3 And it was something that I think evaporated
4 into the air (indicating), and --

5 Q Okay. So as a claim agent, you didn't actually do
6 anything on that claim?

7 A I did not, no.

8 Q Do you know who did? Who was the claim agent at
9 that time?

10 A Well, the District Claim Agent at the time was John
11 Conser.

12 Q Would John Conser have responded to that claim?

13 A Yes.

14 Q Do you know how he would have responded?

15 A Probably would have found out what happened and --
16 I don't know. I mean I wasn't here.

17 Q Okay. Would he have made any records that you know
18 of?

19 A Yes.

20 Q What records would those be?

21 A I believe there were drafts issued to a number of
22 people who were involved in the evacuation.

23 There may have been some people that made
24 inhalation claims. I'm not really sure. And he
25 would have been the agent or one of his claim

agents would have been the individual that issued those settlement drafts to put the issue to rest.

That is, with the people that were either evacuated, that missed time from work because they may have shut down a factory or something, somebody that may have gone to the hospital for a checkup for an alleged respiratory problem as a result of this, something of that nature.

Q When you say a draft, do you mean a draft settlement document?

A Yes.

Q If you could go explain to me how a draft settlement document is produced.

A Well, a draft settlement document reads something like this: "In settlement of claim for," and then there's a blank and you fill in whatever it is, either property damage or personal injuries, and then "Sustained by," and you put the individual's name in, "At," and then you fill in the location and you fill in the date.

Q Okay. And who makes the claim? In other words, who determines how much they should be reimbursed for?

A That's decided by the Claim Department.

Q Okay. That's what I'm interested in, is how that

number is derived.

A Depending upon what they are claiming, a settlement evaluation is made, and if both parties can agree on that, then a draft is cut and the case is ostensibly settled.

Q And by "both parties," you mean Conrail is one party and the other party would be the claimant?

A Yes.

Q Do you remember whether there with any complaints regarding this spill of hydrogen chloride?

A Well, as I have stated, I was not here at the time, but since there with numerous settlement drafts issued, I would believe that there probably were.

Q Do you know approximately how many settlement drafts were issued?

A No, I don't.

Q Was it more than five?

A Yes.

Q More than ten?

A Would I say so.

Q More than 50?

A I would think so.

Q More than a hundred?

A I'm not sure.

Q Okay. Do you know whether Conrail settled any of

1 those claims?

2 A Yes. Without admitting liability I do not believe
3 in this particular case. As I have stated we filed
4 suit against the manufacturer of the car, the
5 Burlington Northern and the company that loaded
6 that car with the what I believe was hydrogen
7 fluoride.

8 Q Okay. Do you know what the outcome of that action
9 was?

10 A Well, I am not a lawyer, and I'm not really sure
11 except to say that any summary judgments that were
12 filed by codefendants were granted by the Court.

13 But I believe it had to do with
14 technicalities and it's still arguable whether or
15 not -- whether Conrail was negligent in this
16 particular case.

17 Q Do you know whether that decision regarding those
18 summary judgments has been appealed?

19 A I don't think it has.

20 Q Are you aware of any other incidences like that
21 involving tank cars?

22 A Incidents like that?

23 Q Let's just say are you aware of any incidences
24 involving tank cars.

25 MR. ERMILIO: Any particular time

period?

MR. LINDLAND: Yes, between 1983 and 1991.

A Where at?

BY MR. LINDLAND:

Q Anywhere.

A I believe there might have been some chemical or liquid spill around Inwood, Indiana back sometime in the 1980's.

Again, before I came to Elkhart.

Q Do you remember what material that was?

A No.

MR. CUNNINGHAM: Kurt --

MR. ERMILIO: Kurt, is there any reason to get into other --

MR. CUNNINGHAM: I mean we are not --

MR. ERMILIO: (Continuing) -- yards?

The case involves the Elkhart Yard. This has absolutely no relevancy or any possibility of leading to relevant information. If we are dealing with Inwood, Indiana or Cleveland, Ohio for the time and date, this is -- we have spent an hour and a quarter and have just begun to get to something related to Elkhart.

1 I would think it's time to get to
2 something that at least could possibly
3 lead to relevant evidence.

4 MR. LINDLAND: Well, I think the
5 material transported in tank cars by Conrail
6 is relevant.

7 MR. CUNNINGHAM: Kurt, that --

8 MR. ERMILIO: If it goes through Elkhart
9 it may be possibly relevant, but you haven't
10 asked that question. You've asked about
11 spills at anywhere --

12 MR. LINDLAND: Okay.

13 MR. ERMILIO: (Continuing) -- that he is
14 familiar with and that has absolutely nothing
15 to do with this case.

16 MR. CUNNINGHAM: I want to voice the
17 same objection, because Conrail carries I'm
18 sure materials that are hazardous all over
19 the United States, and unless we begin to
20 focus on Elkhart, we will be here for weeks,
21 and this man is a claim agent that has been
22 in several locations, obviously has dealt
23 with all kinds of different claims, property
24 damage and otherwise, and it's endless, but
25 I have no problem with knowing the procedures

1 at Elkhart, knowing the spills at Elkhart
2 during relevant periods, and so with that I
3 think it would help us all, especially in the
4 interest of economy, to try and get to that
5 point.

6 And I know you aren't trying to
7 intimidate the Defendants by drawing this out
8 with, you know, the expense, but this is
9 expensive to someone who may have to pay this
10 whole thing.

11 MR. LINDLAND: Okay.

12 Q Do you know whether a train traveling through
13 Inwood, Indiana would pass through the Elkhart
14 Yard?

15 A No, I don't know that.

16 Q Are you aware of any other spills other than the
17 Inwood, Indiana spill?

18 MR. ERMILIO: Are we limiting this to a
19 time period or to a particular rail yard?

20 MR. LINDLAND: Between 1983 and 1991.

21 MR. ERMILIO: Is this focused on Elkhart
22 or any -- are we going back to the United
23 States?

24 MR. LINDLAND: I'm asking with respect
25 to his job as a claim agent whether he was

1 aware of any spills as a claim agent.

2 MR. ERMILIO: He told us --

3 MR. LINDLAND: Between 1983 and 1991.

4 MR. ERMILIO: He told us that in 1983 he
5 was in Ohio, I believe, and he didn't get to
6 the district that includes Elkhart until
7 1990, I believe it was.

8 MR. LINDLAND: Right. What's --

9 MR. ERMILIO: So this goes back to our
10 discussion a minute ago. What is the purpose
11 of asking about any spills from '83 to '91?

12 MR. LINDLAND: Because I'm interested in
13 finding out what his job as a claim agent,
14 what he does if there is a spill, how he
15 becomes aware of it.

16 MR. ERMILIO: You've asked him that
17 question at least three different times in
18 different manners.

19 MR. LINDLAND: Well, I mean I don't want
20 to burden the record with all this, but...

21 MR. ERMILIO: He's answered it. I don't
22 think it's burdening the record. I think
23 this goes to our concern throughout this
24 case that we are -- we are making available
25 deponents who --

1 MR. LINDLAND: Look --

2 MR. ERMILIO: We have got to have
3 information that's relevant to this
4 case.

5 MR. LINDLAND: I appreciate that except
6 he said he doesn't do anything --

7 MR. ERMILIO: And it's an expense to
8 Conrail and of no concern to the United
9 States, and it's time I think to begin
10 focusing on deponents with information
11 relevant to this case, and if you are going
12 to hold us to producing deponents who may
13 have some possible connection in some way
14 to the case, then in our doing so we will
15 ask when we do produce them you ask questions
16 related had to the issues in this case and
17 not on -- we spent moving on an hour and a
18 half now and we have had one brief discussion
19 on Elkhart. And very little otherwise.

20 So I'll put it into this also time and
21 money, but let's try to limit this as best we
22 can.

23 MR. LINDLAND: I see. Basically what
24 you just said is the same thing as Pierce
25 said a minute ago, and if you are concerned

1 with time and money I don't know why we spent
2 the last few minutes just listening to a
3 reiteration of what Pierce said.

4 MR. ERMILIO: Because it was an
5 investment of about two minutes hoping to
6 save not only time in this deposition, but
7 time in the 15 to 20 more that you have
8 scheduled.

9 Let's try to focus on the issues.

10 And the reason I had to reiterate it was
11 not because I just wanted to just repeat what
12 Pierce said but you were in fact asking about
13 any spill anywhere in the country, so
14 obviously our request didn't land where it
15 should have.

16 MR. LINDLAND: Are you instructing him
17 not to answer?

18 MR. ERMILIO: I'm --

19 MR. CUNNINGHAM: Let's go off the record
20 just a minute.

21 MR. ERMILIO: I don't want to go off the
22 record.

23 MR. CUNNINGHAM: Okay.

24 MR. ERMILIO: I believe this is
25 appropriate for the record.

1 MR. CUNNINGHAM: Okay. That's fine.

2 MR. ERMILIO: I'm not instructing him
3 not to answer. I'm objecting once again to
4 your questions.

5 I will allow him to answer. We can go
6 forward from there.

7 BY MR. LINDLAND:

8 Q Are you aware of any other spills of hazardous
9 materials between 1983 and 1991 as a claim agent?

10 A I'm not sure if they are hazardous, but I sometimes
11 am made aware of a liquid spill of some type that
12 may or may not be hazardous and may be very, very
13 minor.

14 Q Okay. And why are you made aware of that?

15 A I am sometimes sent a report or something of
16 unusual occurrences or something.

17 Q A CT-168?

18 A Oh, geez, I don't know.

19 Q Okay.

20 A You know, some computer-generated report that may
21 be sent to me just for informational purposes just
22 to see what's going on, on the railroad. There are
23 no claims that are made. I don't investigate it.

24 Q Okay.

25 A Geez, I don't do anything with it except read it

1 and that's about it.

2 Q But you are just sent these, the usual occurrence
3 report as a general matter, or are they --

4 A Just as informational. Just for informational
5 purposes, just to know what's going on.

6 Q Okay. Are you aware of receiving any occurrence
7 reports from the Elkhart yard between 1983 and
8 1991?

9 A Receiving them from the Elkhart yard?

10 Q Or regarding spills or unusual occurrences in the
11 Elkhart yard?

12 A I may have -- may have come -- I may have had one
13 or two that I've gotten.

14 Q Do you remember when those were?

15 A And again, I'm not sure they are hazardous
16 materials. You know, they may have been. Geez, I
17 don't know, sometime -- I would certainly say that
18 I don't know anything with respect to prior to when
19 I got here in 1990.

20 Q Right. I don't expect you to know.

21 A But since then I may have gotten maybe word or
22 notice of some minor spill here or there that may
23 have occurred in Elkhart yard, but again I must
24 reiterate that I would not do anything with regard
25 to that unless I was involved as a claim agent much

1 like the situation I described to you that occurred
2 back in 1985 with the hydrogen fluoride.

3 Q Okay.

4 A And those incidents have not happened since I have
5 been here.

6 Q Okay. Are you aware of any spills in the Elkhart
7 yard that caused injury?

8 MR. ERMILIO: Are you asking whether the
9 spills caused the injury?

10 MR. LINDLAND: Whether the spill caused
11 injury.

12 MR. ERMILIO: What do you mean by
13 whether or not? Regardless of the spill
14 causing injury? I -- I don't understand your
15 question.

16 MR. LINDLAND: Okay.

17 Q Do you understand the question?

18 A No. It's too vague for me.

19 Q Okay. Are you aware of any spills that occurred in
20 the Elkhart Yard which caused either personal
21 injury or property damage?

22 A Well, I believe I mentioned that 1985 incident.

23 Q Right. Okay. Other than the 1985 incident.

24 A No. Except that maybe there was loss of lading
25 with those several administrative or AOR messages

1 that I may have gotten in respect to leaks and
2 somebody is losing lading and if they made freight
3 claims I don't know, but as far as personal injury
4 are concerned or property damage to Conrail, no, I
5 do not know of any.

6 Q You mentioned that the freight claims department
7 would know about loss of ladings?

8 A I would assume so.

9 Q Okay. You wouldn't know about it because it's not
10 in your department?

11 A I wouldn't handle it.

12 Q But would you know about it?

13 A I -- I may know by just looking and seeing that a
14 tank car may have leaked detergent or whatever, I
15 don't know. I might -- yes, if I looked at it then
16 I would know about it. But would I do anything
17 about it? No. No.

18 Q Okay. Do you remember any incidences where you
19 looked at it? And by "it," I assume you mean a
20 report, and saw that there was a loss of lading at
21 the Elkhart Yard?

22 A I may have.

23 Q You don't remember any specific instances?

24 A No.

25 Q Are you aware of the use or handling of hazardous

materials in the Elkhart Yard?

A Well, I realize that Conrail moves commodities that include hazardous materials. Other than that, I don't know anything else about it.

Q Have you ever heard of carbon tetrachloride?

A No.

Q Have you ever heard of trichloroethylene?

A No.

Q Are you aware of any accidents or incidences in the Elkhart Yard involving refrigerated cars or refrigerated buildings?

A No.

Q Are you familiar with refrigerants at all?

A Are those the things that are destroying the ozone layer? I don't know. If that's it, then I know about that.

Q You mentioned that the freight claim department would be responsible for handling loss of lading, is that right?

A It's my understanding, yes.

Q Do you know who runs the freight claims department at Elkhart?

A I don't believe there is a freight claims department at Elkhart.

Q Do you know why where the freight claims department

1 is that is responsible for loss of lading in the
2 Elkhart yard?

3 A No.

4 Q Do you know who would know?

5 A No.

6 Q If I lost something from a car, suppose I was
7 shipping something through the Elkhart Yard and
8 I lost it. Who would I call, do you know?

9 A I believe there's a toll free number that one can
10 call for instances such as what you've described.

11 Or perhaps a shipper would call a sales
12 representative who would contact them with the
13 appropriate party to find out where their -- where
14 their shipment is located if it is late arriving or
15 if it is lost.

16 That's pretty much a sales department matter
17 with their client shippers, and perhaps they have
18 liaison with the damage prevention/freight claims
19 people.

20 Q Okay. Is that the sales department in
21 Philadelphia?

22 A I -- I don't know. I think the sales department is
23 disseminated throughout the Conrail system.

24 Q Okay. If we could go back to 1985, the tank car of
25 hydrogen fluoride?

1 A I believe that's what it was.

2 Q Do you know whether there were any records kept by
3 your office regarding that spill?

4 A I believe there may have been some records with
5 respect to the --

6 Q Other than the draft settlements?

7 A There may have been. I know there's copies of
8 draft settlements, but as far as the investigation
9 files, that case was in litigation. Perhaps the
10 Conrail Law Department has a file on it. I think
11 outside counsel was hired to represent us in that
12 case.

13 Q Would it be a Conrail rail -- strike that.

14 Would it be the Law Department at Conrail who
15 would keep draft settlements?

16 A I don't know if they would have copies of these
17 draft settlements or not.

18 Q Okay. Do you know who would have them?

19 A Like I stated, I think they may have some copies of
20 some of the drafts that were issued with respect to
21 that 1985 incident.

22 MR. LINDLAND: Okay. I have no further
23 questions.

24 MR. CUNNINGHAM: I have some if this is
25 a good time or do you want to take a break

1 for a minute?

2 MR. ERMILIO: No.

3 MR. CUNNINGHAM: I'll move around so you
4 can see me.

5 MR. ERMILIO: If we could finish because
6 we have someone scheduled for this afternoon.

7 MR. CUNNINGHAM: That's fine.

8 CROSS EXAMINATION

9 BY MR. CUNNINGHAM:

10 Q Mr. Callender, I'm Pierce Cunningham, and I
11 represent Penn Central. If there are any of the
12 questions I pose to you that are not clear, they
13 are not clear to you or you think you need further
14 information, feel free to ask me. I'm here
15 basically just to find out some of the procedures
16 both before Conrail took over the Elkhart Yard and
17 afterwards.

18 I'm going to try to restrict it to matters
19 involving Elkhart, but some of the policies, some
20 of the procedures we may get into are general, so
21 do the best you can with those. All right?

22 A Very well.

23 Q Okay. And having been a claim manager myself, I
24 had a similar type job to you, so I think I know
25 what you go through and what some of the procedures

1 may be.

2 First of all, let's talk about the difference
3 between a cargo loss and a property damage or
4 personal injury loss. Can we do that for a minute?

5 A Yes.

6 Q Okay. I take it that the word "lading" is
7 synonymous with cargo, is that correct?

8 A Yes.

9 Q And generally -- and this is probably a very rough
10 definition -- cargo or lading would be personal
11 property that would be transported on one of the
12 trains, is that correct?

13 A Whether it be automobiles or cornflakes or
14 whatever, yes.

15 Q And there are numerous types of products that are
16 transported by railroads every day, isn't that
17 right?

18 A A multitude of products.

19 Q Is there a distinction now in terms of the handling
20 of claims involving cargo and lading as opposed to
21 property damage claims?

22 A Yes.

23 Q Are they -- and when I say "they," cargo claims --
24 handled by different departments than property
25 damage claims?

1 A Yes. Except for the example I gave the first
2 attorney (indicating) that examined me, wherein if
3 we damage a bumping post at Ford Motor Company,
4 it's not lading but it's their property, and we
5 would handle that claim with them, but as far as
6 what's shipped over the rails in our cars -- by
7 that I'm referring to the lading that we are moving
8 or the cargo, if there's damage to that cargo it's
9 not handled by my department.

10 Q All right. Have you in your jobs either for Penn
11 Central or Conrail ever had the responsibility for
12 handling of cargo or lading claims?

13 A No.

14 Q Okay. That helps, because then we don't have to
15 get into some other claims.

16 I take it, though, as a general employee
17 handling claims, that although you are not a
18 specialist in any way with cargo losses that you
19 know something about who handles those claims or
20 not?

21 A I believe that was touched upon previously. Yes.

22 Q Okay. So let's talk for a minute about the people
23 at Conrail who do handle lading or cargo claims.

24 Can we do that?

25 A Very well.

1 Q All right. Tell me what you know about in the
2 field at Elkhart now, how a cargo loss would be
3 handled. By whom, and as much other detail as you
4 may know.

5 A Well, again, I am not an expert and this is not
6 my -- this is not my department, so I hope you are
7 not asking me to speculate here.

8 Q No. What I'm going to do is merely try and get a
9 general idea how it's handled, and then ask for
10 individuals that you may know who are specialists
11 in that and who handle that, so that we can go to
12 them and ask them. Okay?

13 A All right. If there's been an accident and if --
14 you know, when it's reported to supervision and
15 it's involving loss or damage to lading or cargo,
16 somebody from freight claims or damage prevention
17 would be called, depending upon the severity of the
18 damage or loss, and they would show up at the scene
19 and perhaps take photographs and see what they
20 could restore, save, if you will, be involved
21 perhaps to a certain extent with other parties,
22 whether they be the Fire Department or a Haz Mat
23 team or whatever, to try and clean it up, perhaps.

24 But then again, I'm speculating a little bit
25 here.

1 Q All right. Let's talk about --

2 A And I don't want to do that.

3 Q Let's talk about Elkhart for a minute. At the
4 present time, who handles freight claims?

5 A I don't know.

6 Q Okay. Who would know?

7 A I'm not sure.

8 Q I believe there's a toll free number that one would
9 call that could lead them to the right individual,
10 if they had a lading problem, a loss of lading or
11 damage or whatnot.

12 Q Is it your understanding that those kind of claims
13 are adjusted in the field by someone located at
14 Elkhart?

15 A I don't know.

16 Q Would the Terminal Superintendent --

17 A And again, I might add, I don't think there is a
18 freight claim or damage prevention individual at
19 Elkhart.

20 Q All right. It's probably something that's more in
21 the nature of a district individual?

22 A Perhaps.

23 Q Okay. Do you know in any way how cargo or lading
24 claims go up the line? By that I mean back to
25 Philadelphia.

1 A No, I do not.

2 Q Do you know anyone presently employed with Conrail
3 who would know that answer?

4 A I can't think of a name.

5 Q Okay. Now, in some instances, there are both
6 cargo/lading claims and property damage claims in
7 one incident, right?

8 A Could be.

9 Q All right. Let me give you an example. First of
10 all, do you know a Mr. Claude Bruton?

11 A No.

12 Q Okay. Do you know anything about an incident which
13 he has reported to the EPA as having involved the
14 spill of carbon tetrachloride as a result of an
15 alleged derailment puncture of a tank car?

16 Do you know anything about an incident such
17 as that that took place allegedly in late sixties
18 about the time you would have first become employed
19 with Penn Central but not at Elkhart?

20 A No.

21 Q Okay. Now, using that -- I call it hypothetical --

22 MR. ERMILIO: I'd object to that
23 characterization.

24 MR. LINDLAND: Join in that objection.

25 MR. CUNNINGHAM: I thought you would.

1 Q You would admit that such an incident involved was
2 a cargo loss, a spillage of a material known as
3 carbon tetrachloride into the ground, okay, and we
4 are assuming damage to the tank car itself?

5 MR. ERMILIO: Pierce, he can't admit
6 anything to -- he said he doesn't know
7 anything about it. He can only admit what
8 you tell him about it.

9 MR. CUNNINGHAM: I am asking him to
10 assume this incident and then ask him.

11 Q Isn't it true that there are really at least two
12 types of claims that would result from such an
13 incident, namely a cargo loss claim and a claim
14 for property damage to the tank car itself?

15 A There may be, but my department or my claim
16 department and my job, I would not handle either
17 one if there was in fact two separate claims.

18 Q That's what I want to try to get at.

19 I thought that maybe you would get in on the
20 property damage claim to the tank car, but that's
21 apparently wrong.

22 A That is correct.

23 Q Okay. Let's assume there was some negligence on a
24 third party that caused the damage to Conrail's
25 tank car. Okay?

1 A Very well.

2 Q You would not be involved in that?

3 A Let me give you a hypothetical.

4 Q Well, okay. Let me clarify.

5 A Okay.

6 Q There is a distinction, at least as I understand
7 it, in the claim field -- and perhaps that's where
8 I'm misleading you here -- between a physical
9 damage claim and a property damage claim. And my
10 understanding of a physical damage claim is damage
11 done to property owned by in this instance Conrail,
12 whereas property damage would involve a third
13 party.

14 Is that your understanding of that?

15 A It is now.

16 Q Okay. With that in mind, do you only adjust,
17 investigate and evaluate claims for personal injury
18 and physical damage -- I'm sorry. Not physical
19 damage, but property damage?

20 A Property damage that pertains to third parties?

21 Q Right.

22 A I do that.

23 Q Okay. Let's say that somebody is driving a vehicle
24 at a grade crossing and this individual is about .3
25 with a BAC, and they run through a crossing gate

1 and by flashing lights and run into the side of a
2 tank car and punctures our tank car.

3 A Right. I could very conceivably run a collection
4 case against that individual.

5 Q Okay. So those are the kinds of things you
6 investigate as well as claimed personal injuries by
7 third parties, is that correct?

8 A That is correct.

9 Q Okay. And so you don't involve yourself in any
10 other type of claims, is that right?

11 A I handle personal injury claims, property damage
12 claims, and certain instances collection cases as I
13 have just described to you.

14 Q In the general scheme of things as you deal with
15 them, is Conrail self-insured in all those
16 instances?

17 A We are self-insured.

18 Q Is there any -- strike that.

19 Are there any claims that are covered by
20 insurance?

21 A As it relates to my side of the business?

22 Q Well, I'm not trying to confuse you. Sometimes
23 claims are of such a magnitude in terms of dollars
24 that there is a retention limit and then over that
25 amount there's a certain amount of insurance, and

1 I'm just asking you if you know whether Conrail has
2 any insurance over -- or claims over a certain
3 amount.

4 A In certain instances, I believe we do.

5 Q Okay. All right. That's all I want to know about
6 that because we are ...

7 Turn back to 1968 when you first were
8 employed with Penn Central. And even though you
9 weren't in Elkhart, I take it that at that time you
10 may have known some of the procedures that existed
11 in -- I think you started in Cleveland?

12 A No. I started out on the railroad in Dayton, Ohio.

13 Q Okay. And I take it that each yard operates
14 somewhat the same way; some procedures are the
15 same, is that right?

16 A Standard operating procedures with respect to
17 switching cars or running locomotive units and
18 doing the nuts and bolts manual labor work is
19 pretty standard throughout all the railroads in
20 the United States of America.

21 Q In 1968 when you were working for Penn Central, if
22 a spill occurred let's say Dayton, Ohio, what would
23 be the general way in which that kind of a spill,
24 hazardous material, carbon tetrachloride, would
25 have been handled, do you have any idea?

1 A Anything I would say would be pure speculation on
2 my part.

3 Q Go ahead and speculate.

4 MR. ERMILIO: Handled by the Claim
5 Department, indeed?

6 MR. CUNNINGHAM: Yes.

7 MR. ERMILIO: He wasn't in the Claim
8 Department.

9 MR. CUNNINGHAM: Not in the Claim
10 Department. Just general knowledge of what
11 might happen.

12 MR. ERMILIO: He was a --

13 THE WITNESS: I was an 18-year-old kid.

14 MR. ERMILIO: He was fireman in 1968.

15 MR. CUNNINGHAM: Fine. There is
16 relevance here because Bruton has said that
17 in 1968 there was a spill.

18 MR. ERMILIO: Right. Number one, he was
19 in Dayton, Ohio. Number two, he wasn't in
20 claims; he wasn't in any kind of response.

21 MR. CUNNINGHAM: I'm just asking if he
22 knows.

23 MR. ERMILIO: Mr. Lindland asked
24 seemingly endless questions upon that. I
25 think we have covered what his responsibility

1 was during that time period and once again,
2 I just ask that we get to something that is
3 potentially relevant.

4 MR. CUNNINGHAM: This relevant in the
5 sense that we are all trying to find out what
6 procedures were at that time in Penn Central.
7 Okay. That's what I want to know.

8 MR. ERMILIO: Procedures for what?

9 MR. CUNNINGHAM: For reporting of
10 spills.

11 MR. ERMILIO: And he has explained
12 that's not his responsibility.

13 MR. CUNNINGHAM: I know he's -- I am
14 aware of that.

15 MR. ERMILIO: Continue.

16 MR. CUNNINGHAM: That's not the
17 question. I prefaced that. Knowing that
18 it's not his responsibility, but knowing as
19 an employee he had some general knowledge.
20 That's all.

21 Q Do you know?

22 A You have to repeat the question again, please.

23 Q All right. In 1968 as a Penn Central employee in
24 a yard at as I understand it Dayton, Ohio, do you
25 have any idea, if a spill of carbon tetrachloride

1 took place how such a spill would be reported, and
2 by that I mean to whom would such a spill be
3 reported in the yard? If you don't know, you don't
4 know.

5 A I don't know.

6 Q Okay. Do you know any of the procedures involving
7 cargo claims or lading claims?

8 By that I mean how they are settled; are they
9 settled in a similar way to the way you settle your
10 claims, any of that.

11 A I don't know.

12 Q Do you know anybody who does know?

13 A No. Or I may know them but don't know that they
14 know.

15 Q Have you ever met or dealt with in Conrail, anyone
16 who adjusts for Conrail bill of lading -- or lading
17 claims or cargo claims in connection with your
18 work?

19 A I'm sorry. You are going to have to repeat that
20 question.

21 Q Sure.

22 A Please.

23 Q Have you met a fellow employee charged with the
24 responsibility of settling claims involving cargo
25 during your stay with Conrail?

1 A Not that I am aware of.

2 Q Okay. So you have no familiarity as I understand
3 it at all with cargo claims?

4 A I'm not involved with that.

5 Q I understand that. What I'm trying to do is find
6 out --

7 A I don't know what procedure they operate under to
8 adjust such claims.

9 Q How do we find that out?

10 A I would presume you would want to talk to somebody
11 in damage prevention or freight claims.

12 Q Do you know anything about damage prevention and
13 that department?

14 A I -- I could be wrong, but it's my understanding
15 that the same department, damage prevention and
16 freight claims is synonymous, I believe.

17 Q So he doesn't know.

18 MR. ERMILIO: Pierce, if I could
19 just --

20 MR. CUNNINGHAM: What?

21 MR. ERMILIO: For your information, an
22 employee of Conrail from damage prevention
23 has been noticed for deposition by the United
24 States for next week.

25 MR. CUNNINGHAM: That will save a lot of

1 time.

2 MR. ERMILIO: When we received this
3 notice I notified the United States that
4 Mr. Callender does not deal with freight
5 claims.

6 MR. LINDLAND: I wasn't aware of that.

7 MR. ERMILIO: We objected to this
8 deposition, but we were told they wanted to
9 go forward with it and we agreed to make
10 Mr. Callender available.

11 MR. CUNNINGHAM: Knowing that that's
12 coming, I don't believe I have any further
13 questions. I really truly am trying to find
14 out some information, and acting in good
15 faith believed that you may have that
16 information, and you don't.

17 THE WITNESS: Very well.

18 MR. ERMILIO: In the future I'll try to
19 keep you apprised of the discussions between
20 the United States and us regarding the
21 deponents that are being produced.

22 MR. CUNNINGHAM: That's fine. Thank
23 you.

24 MR. LINDLAND: I have no further
25 questions.

1 MR. ERMILIO: I have no further
2 questions.

3 (Deposition concluded at 12:15 o'clock p.m.)
4

5 _____
Wesley L. Callender

6 SUBSCRIBED AND SWORN to before
7 me this _____ day of _____,
A.D., 1992.

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Notary Public, State of Indiana
9 County of Residence:
My Commission Expires:
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